

Message Text

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TO AMEMBASSY LONDON

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HQ 3AF RAF MILDENHALL

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E.O. 11652: GDS-1979

TAGS: MILI/UK

SUBJECT: EXEMPTION FROM VALUE ADDED TAX (VAT) ON US FORCES

NON-APPROPRIATED FUND (NAF) EXPENDITURES

REF: LONDON A-635, 10 MAY 1973

1. DEPARTMENT AND DOD SUPPORT FULLY EMBASSY RECOMMENDATION
TO CONTINUE TO PROTEST ANY INDICATION THAT HMG WILL DENY
RELIEF FROM VAT ON SERVICES PROVIDED OR PURCHASED BY US
FORCES NAF ACTIVITIES IN UK. WE ARE HOPEFUL THAT EMBASSY'S
EFFORTS WILL FORESTALL A DECISION BY HMG TO DENY SUCH RELIEF
BUT EMBASSY SHOULD MAKE IT CLEAR TO ALL CONCERNED THAT IF
SUCH A DECISION IS MADE USG WILL CONTINUE TO PRESS ITS
EFFORTS TO SECURE COMPLETE RELIEF FROM VAT.

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2. AS WE UNDERSTAND ATTACHMENTS TO REF AIRGRAM, INCLINATION OF HM CUSTOMS AND EXCISE TO DENY RELIEF FROM VAT ON SERVICES OF NAF ACTIVITIES IS BASED ON TWO PREMISES:
(A) NAF EXPENDITURES ARE NOT USG EXPENDITURES WITHIN MEANING OF AGREED MINUTE OF 17/18 MARCH 1952 SINCE NAF FUNDS NOT APPROPRIATED BY CONGRESS; AND (B) THE "UNDERSTANDINGS" SET FORTH IN 1952 AGREED MINUTE REFER ONLY TO DUTIES AND TAXES RELATING TO IMPORTATIONS OR PURCHASES OF GOODS AND THERE IS NO OBLIGATION OF HMG TO RELIEVE SERVICES SUPPLIED TO THE US FORCES FROM VAT. DEPARTMENT AND DOD CONSIDER BOTH OF THESE

PREMISES TO BE INVALID.

3. NAF ACTIVITIES ARE INSTRUMENTALITIES OF THE USG AND ARE AN INTEGRAL PART OF THE US FORCES. IN SUPPORT OF THIS PROPOSITION, EMBASSY MIGHT FIND IT HELPFUL TO POINT OUT THAT THE UNITED STATES SUPREME COURT HAS RULED THAT POST EXCHANGES "ARE ARMS OF THE GOVERNMENT DEEMED BY IT ESSENTIAL FOR THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS. THEY ARE INTEGRAL PARTS OF THE WAR DEPARTMENT, SHARE IN FULFILLING THE DUTIES ENTRUSTED TO IT, AND PARTAKE OF WHATEVER IMMUNITIES IT MAY HAVE UNDER THE CONSTITUTION AND FEDERAL STATUTES" (STANDARD OIL COMPANY V. JOHNSON, 316 U.S. 481 (1942)). THIS RULING HAS BEEN UPHELD IN LATER CASES AND APPLIED TO OTHER NAF ACTIVITIES. MOREOVER, NAF ACTIVITIES HAVE CONSISTENTLY BEEN RECOGNIZED BY OTHER NATO ALLIES (INCLUDING THE UK), AS WELL AS OTHER COUNTRIES IN WHICH US FORCES ARE STATIONED, AS BEING A PART OF THE US FORCES ENTITLED TO THE SAME EXEMPTION FROM CUSTOMS DUTIES AND TAXES UNDER NATO SOFA AND BILATERAL AGREEMENTS AS OTHER ACTIVITIES OF THE US FORCES. THE USE OF FUNDS NOT APPROPRIATED BY CONGRESS MERELY REFLECTS THAT THESE ACTIVITIES ARE INTENDED TO BE SELF-SUSTAINING TO THE MAXIMUM EXTENT POSSIBLE, AND DOES NOT IN ANY WAY ALTER THEIR STATUS AS INSTRUMENTALITIES "OR ARMS" OF THE USG. FURTHERMORE, NAF ACTIVITIES ARE SUPPORTED IN MANY WAYS BY APPROPRIATED FUNDS, SUCH AS BY CONSTRUCTION OF FACILITIES AND PROVISION OF MILITARY MANPOWER. THE ABILITY OF NAF ACTIVITIES TO FULFILL THEIR MISSION OF PROVIDING ESSENTIAL

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MORALE AND WELFARE SERVICES TO MEMBERS OF THE US FORCES DEPENDS UPON OPERATION AT THE LEAST POSSIBLE COST. THEREFORE, THE IMPOSITION OF TAXES ON THEIR EXPENDITURES DIRECTLY AFFECTS THE PERFORMANCE OF AN IMPORTANT MISSION OF THE US FORCES. THE USE OF NON-APPROPRIATED FUNDS IN NO WAY REDUCES THE BURDEN ON THE USG THAT WOULD RESULT FROM THE IMPOSITION OF VAT ON SERVICES PROVIDED OR PURCHASED BY NAF ACTIVITIES.

4. THE OPINION OF H.M. CUSTOMS AND EXCISE THAT THE 1952 AGREED MINUTE COVERS ONLY DUTIES AND TAXES ON IMPORTATIONS OR PURCHASES OF GOODS TOTALLY IGNORES PARAGRAPH 1 OF THE AGREED MINUTE WHICH STATES THAT THE "UNDERSTANDING" EXTENDS TO TAX EXEMPTION FOR "UNITED STATES GOVERNMENT EXPENDITURES IN THE UNITED KINGDOM FOR EQUIPMENT, MATERIALS, FACILITIES, AND SERVICES." PARAGRAPH 3 OF AGREED MINUTE UPON WHICH H.M. CUSTOMS AND EXCISE RELIES REFERS ONLY TO TAXES AND DUTIES THEN IN EXISTENCE, WHICH INCLUDED PURCHASE TAX ON GOODS. PARAGRAPH 4 OF AGREED MINUTE, HOWEVER, MAKES IT CLEAR THAT PARAGRAPH 3 IN NO WAY LIMITS THE SCOPE OF TAX

RELIEF DEFINED IN PARAGRAPH 1, WHEN IT PROVIDES THAT THE TWO GOVERNMENTS WILL AGREE UPON PROCEDURES FOR THE PURPOSE OF MAKING AVAILABLE EXEMPTION OR RELIEF FROM ANY TAXES OF THE UK NOT SPECIFICALLY REFERRED TO IN THE AGREED MINUTE WHICH MIGHT BE FOUND TO BE APPLICABLE TO US GOVERNMENT EXPENDITURES IN THE CATEGORIES EMBRACED BY THE AGREED MINUTE. THE PHRASE "CATEGORIES EMBRACED BY THIS AGREED MINUTE" MUST NECESSARILY INCLUDE THE PROVISIONS OF PARAGRAPH 1 OF THE AGREED MINUTE WHICH EXPRESSLY REFER TO EXEMPTION FROM TAXES ON US GOVERNMENT EXPENDITURES FOR SERVICES. IMPLEMENTATION OF THE 1952 AGREED MINUTE DURING THE PAST TWO DECADES SUPPORTS THIS INTERPRETATION, SINCE RELIEF HAS BEEN PROVIDED UNDER ITS TERMS FROM TAXES ON SERVICES AS WELL AS FROM TAXES ON PURCHASES OF GOODS. E.G., THE SELECTIVE EMPLOYMENT TAX (SET) WAS A TAX ON SERVICES, AND EXEMPTION FROM SET WAS PROVIDED USG ON EXPENDITURES OF BOTH APPROPRIATED AND NON-APPROPRIATED FUNDS (FOR DETAILS SEE EMBASSY NOTE NO. 27, NOVEMBER 13, 1969, PURSUANT TO STATE CA-5095, SEPT. 12, 1969). IN THIS CONNECTION, IT CAN BE FURTHER ARGUED THAT SINCE VAT
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REPLACES BOTH SET AND THE PURCHASE TAX, AND NAF ACTIVITIES RECEIVED EXEMPTION FROM BOTH PURCHASE TAX AND SET, THERE IS NO BASIS FOR LIMITING NAF EXEMPTION FROM VAT TO THOSE TRANSACTIONS FORMERLY SUBJECT TO THE PURCHASE TAX. ROGERS

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